IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.5389 OF 2005

Baba Jaising Dhebe. ...
Petitioner.
Vs.
Chief Executive Officer, Zilla Parishad,
Satara & Ors. ...Respondents.

....

Mr.C. G. Gavnekar for the Petitioner.
Mrs. M. P. Thakur, AGP for the Respondents.

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CORAM : F.I. REBELLO, J. AND
DR.D.Y.CHANDRACHUD, J.
January 20, 2006.

P.C. (Per Dr. D.Y. Chandrachud, J.) :

The Petitioner was at the material time, prior to his dismissal from service, a teacher in a Primary School at Chavanwadi. In these proceedings, the Petitioner has averred that in April 2000, "the Petitioner came to know one Anita Dnyandeo Shinde who was aged 19 years and a student of a College at Lonand". The aforesaid student was stated to be residing at Chavanwadi near the school in which the Petitioner was appointed as a primary teacher. The Petitioner is married with two children. The Petitioner has described the nature of his relationship with Anita in the following terms in paragraph 3 of the petition :

> "The Petitioner states that on or about 10-3-2000 the said Anita Dnyandeo Shinde approached the Petitioner and informed that she has ran (sic) away from the house and that she intend (sic) to marry the Petitioner knowing very well that Petitioner was married and having 2 children. She further threatened the Petitioner that in the event Petitioner did not accompany her to Pune, she would commit suicide and the Petitioner would be alone responsible for the said suicide. The Petitioner accordingly accompanied the said Anita and moved from place to place along with her. The Petitioner states that such stay lasted for a month they had voluntarily sexual intercourse."

2. The father of the girl lodged a complaint at the local Police Station at Lonand in the District of Satara, which was registered as C.R. No.30 of 2000. The Petitioner came to be charged for offences punishable under Sections 376, 366 and 506 of the Penal Code. On 18th September 2000, the Chief Executive Officer of the Satara Zilla Parishad passed an order of dismissal against the Petitioner. The order of dismissal inter alia

adverted to the fact that in Criminal Application No.158 of 2000 that was filed by the Petitioner before the Sessions Court at Satara for bail, the Petitioner had specifically stated that he had married Kum.Anita Dnyandeo Shinde at Alandi in the District of Pune. The order of dismissal recorded that the Petitioner was already married and that out of the said wedlock two children have been born. Inasmuch as the Petitioner had married a second time, during the subsistence of the first marriage, the Petitioner was held to be guilty of misconduct under Rule 20 of the Maharashtra Zilla Parishad and Panchayat Samities (Conduct) Rules, 1967. The disciplinary authority decided to dispense with the holding of a departmental enquiry, noting that the conduct of the Petitioner is liable to have an adverse effect on the future of the girl whom he had married and that the Petitioner had brought disrepute to the activity of providing education. Accordingly, in exercise of powers vested in him under Rule 9(2) read with Rules 4 and 5 of the Maharashtra Zilla Parishad and District Service (Discipline and Appeal) Rules, 1964, the Chief Executive Officer passed an order of dismissal from service. The Petitioner preferred an appeal to the Divisional Commissioner which came to be dismissed on 5th November 2001. The revisional authority confirmed the order of

dismissal on 8th April 2005.

3. It may be noted that the criminal prosecution that was launched against the Petitioner resulted in an order of acquittal dated 20th June 2002 that was passed by the Ad-hoc Additional Sessions Judge, Satara. The Learned Sessions Judge held on the basis of the evidence on the record that the victim had in the present case accompanied the Petitioner of her own accord and that the relationship between the parties was of a voluntary nature and character.

4. On behalf of the Petitioner it has been submitted that the Chief Executive Officer of the Zilla Parishad was not justified in dispensing with the enquiry under the provisions of Rule 9 of the Maharashtra Zilla Parishad District Service (Discipline and Appeal) Rules, 1964. It was urged that Rule 9(2) allows the disciplinary authority to dispense with the enquiry where he is satisfied for reasons to be recorded in writing that it is not reasonably practicable to follow the procedure prescribed in the Rules for holding a disciplinary proceeding. In the present case it was submitted that the conditions which have been prescribed in Rule 9

for dispensing with a disciplinary enquiry have not been shown to be established.

5. In the view which were are inclined to take on the basis of the admitted circumstances as they appear on the record of these proceedings, it is not necessary for this Court to express any view on the scope and ambit of Rule 9(2) of the Discipline and Appeal Rules. In this case, the allegation against the Petitioner is that he was guilty of misconduct for violating Rule 20 of the Maharashtra Zilla Parishad District Service (Conduct) Rules, 1967. Rule 20(1) provides thus:

> "20(1). Contracting of marriages.-
>
> (1) No Parishad servant who has a wife living, shall contract another marriage without first obtaining the permission of the Chief Executive Officer, notwithstanding that such subsequent marriage is permissible under the personal law for the time being applicable to him."

Both, the disciplinary authority and the First Appellate Authority

have drawn attention to the fact that it was the case of the Petitioner himself that a marriage has been contracted by him with Anita Dnyandeo Shinde. In other words, the Petitioner does not dispute the status that he had during the subsistence of his first marriage, contracted a second marriage with a young student of a College at Lonand. That being the position, there is no merit in the contention of the Petitioner that an enquiry should have been held, once it is an admitted position that the Petitioner had contracted a second marriage during the subsistence of the first, which is a misconduct under Rule 20 of the Conduct Rules. Consequently, we see no reason to interfere with the punishment which has been imposed upon the Petitioner. Having regard to the facts as they emerge from the averments contained in the petition itself, it cannot be said that the punishment of dismissal is disproportionate or such as would shock the conscience of the Court. There is no merit in the petition. The

petition is accordingly dismissed.

(F.I. Rebello, J.)

(Dr. D.Y. Chandrachud, J.)